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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**  
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8 IROC AVELLI,

9 *Petitioner,*

10 vs.

11 WARDEN NEVENS, *et al.,*

12 *Respondents.*  
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2:05-cv-01049-JCM-GWF

ORDER

14 This stayed habeas action under 28 U.S.C. § 2254 comes before the court on  
15 respondents' motion (#25) to vacate the stay and reopen the matter and motion (#27) to  
16 dismiss.

17 This matter was stayed rather than dismissed contingent upon, *inter alia*, petitioner  
18 filing a state post-conviction petition within forty-five days of the court's January 15, 2008, stay  
19 order. Petitioner thereafter did not do so. He ultimately was released on parole in January  
20 2009, and he fully discharged his sentence on June 30, 2009.

21 Thereafter, following upon respondents' filing of the present motions, court mail to the  
22 last institutional address given by petitioner has been returned with a notation reflecting that  
23 petitioner no longer is at that address. Petitioner has not provided the court with a written  
24 notice of change of address in the over four years since his release on parole. The clerk of  
25 court nonetheless unilaterally "updated" petitioner's former prison address to a second prison  
26 address from a March 2007 filing prior to the stay. However, both the materials submitted by  
27 respondents and the current inmate search feature on the state correction department's  
28 website reflect that petitioner is not in the custody of the Nevada Department of Corrections.

1 The pending motions therefore will be granted, due both to petitioner's failure to comply  
2 with the conditions of the prior stay order and his failure thereafter to provide the court with  
3 an updated notice of change of address as required by LSR 2-2 of the local rules. In  
4 dismissing the action, the court has considered the public's interest in expeditious resolution  
5 of litigation including litigation challenging state court convictions, the court's need to manage  
6 its docket, the risk of prejudice, the public policy favoring disposition of cases on their merits,  
7 and the possible availability of actions other than dismissal.

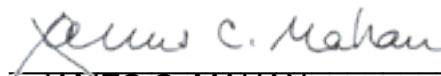
8 IT THEREFORE IS ORDERED that respondents' motion (#25) to vacate the stay and  
9 reopen the matter is GRANTED, the stay is VACATED, and the matter is REOPENED.

10 IT FURTHER IS ORDERED that respondents' motion (#27) to dismiss is GRANTED,  
11 such that, after the clerk administratively notes the reopening of the case for all statistical  
12 purposes, this action shall be DISMISSED without prejudice.

13 IT FURTHER IS ORDERED that a certificate of appealability is DENIED.

14 The clerk of court shall enter final judgment accordingly, dismissing this action without  
15 prejudice.

16 DATED: June 12, 2014.

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19 JAMES C. MAHAN  
United States District Judge